

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 24, 2016 at 10:00 a.m.

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1. [15-28906](#)-B-13 SHELLY CLARK CONTINUED HEARING RE:
Thru #3 Scott J. Sagaria CONFIRMATION OF PLAN
11-16-15 [[5](#)]

SEE ITEMS #2 AND #3 BELOW.

2. [15-28906](#)-B-13 SHELLY CLARK OBJECTION TO CONFIRMATION OF
DL-1 Scott J. Sagaria PLAN BY SACRAMENTO MUNICIPAL
UTILITY DISTRICT
2-10-16 [[29](#)]

Tentative Ruling: The Objection to Confirmation of Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to sustain the objection and deny confirmation of the plan.

The secured claim of Sacramento Municipal Utility District ("SMUD") arises from a purchase-money loan for goods which became fixtures and is secured by a lien on the Debtor's residence. The creditor has filed a timely proof of claim. However, the plan does not provide for SMUD's secured claim as Class 1, 2, 3, or 4 and is not otherwise provided for.

The plan filed November 16, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [15-28906](#)-B-13 SHELLY CLARK OBJECTION TO CONFIRMATION OF
JPJ-1 Scott J. Sagaria PLAN BY JAN P. JOHNSON
1-25-16 [[26](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to sustain the objection and deny confirmation of the plan.

February 24, 2016 at 10:00 a.m.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$772.00, which represents approximately 1 partial plan payment. By the time this matter is heard, an additional plan payment in the amount fo \$772.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 16, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. [15-28217](#)-B-13 JUAN DIAZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-25-16 [[46](#)]

DEBTOR DISMISSED: 01/28/2016

Final Ruling: No appearance at the February 24, 2016, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall enter an appropriate civil minute order consistent with this ruling.

5. [15-27135](#)-B-13 SYLVIA GUIDO
Scott D. Shumaker

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-14-16 [[19](#)]

Final Ruling: No appearance at the February 24, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's' failure to pay \$77.00 due January 11, 2016. The court's docket reflects that the default was cured on January 20, 2016. The payment was the final installment.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

The Debtors have not failed to prosecute this case and are taking actions to confirm a plan. As stated in the Debtors' response, they have successfully brought a motion to value on the second mortgage on their home. The Debtors have also conducted negotiations with Wells Fargo Bank, N.A. resulting in a stipulated settlement of the mortgage amount in lieu of a motion to reconsider. The Stipulation has been signed by the parties and filed with the court on February 5, 2016 (dkt. 88). The Debtors have also stated that they will file and serve an amended plan by the date of the hearing on this matter.

Cause does not exist to dismiss this case. The motion is denied and the case is not dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. [15-25547](#)-B-13 TIMOTHY/MONICA BARRY
Mark W. Briden

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-14-16 [[91](#)]

Final Ruling: No appearance at the February 24, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay \$30.00 for filing an Amendment on December 31, 2015. The court's docket reflects that the default was cured on January 18, 2016.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to dismiss the case.

First, the Debtor is delinquent to the Trustee in the amount of \$1,46.92, which represents slightly more than 1 plan payment. See 11 U.S.C. § 1307(c)(1).

Second, Debtor provides no clear indication for why he did not receive a Certificate of Counseling until one week after the filing of the case. Because the briefing was not received during the 180-day period preceding the date of the filing of the petition, the Debtor is not eligible for relief pursuant to 11 U.S.C. § 109(h).

Third, the Debtor has not taken any further action to confirm a plan in this case after the Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on January 6, 2016. The Debtor is causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

9. [14-21651](#)-B-13 JESUS VASQUEZ
JPJ-1 C. Anthony Hughes

MOTION TO DISMISS CASE
1-27-16 [[29](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to dismiss the case.

The Debtor is delinquent to the Trustee in the amount of \$1,025.00, which represents approximately 2 plan payments. By the time this motion is heard, an additional plan payment in the amount of \$525.00 will also be due. See 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [14-29453](#)-B-13 KAREN SCHWEITZER
JPJ-5 John G. Downing

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
1-27-16 [[102](#)]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to convert this Chapter 13 case to a Chapter 7.

This motion to convert, or in the alternative dismiss, the Chapter 13 bankruptcy case has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted on the following grounds.

First, the Debtor is \$2,060.00 delinquent in plan payments, which represents 3 plan payment. See 11 U.S.C. § 1307(c)(1).

Second, after deduction of estimated Chapter 7 Trustee fees, the total value of non-exempt property in the estate is \$325,371.23. Rather than dismissing the case, conversion to a Chapter 7 proceeding is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. [11-42154](#)-B-13 KENNY/DARLENE RUPRECHT
JPJ-4 W. Scott de Bie

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
1-27-16 [[53](#)]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not convert this Chapter 13 case to a Chapter 7 nor dismiss this case.

This motion to convert, or in the alternative dismiss, the Chapter 13 bankruptcy case has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted due to delinquency in plan payments and because conversion to a Chapter 7 would be in the best interest of creditors.

The Debtors have filed a response stating that they are now current on plan payments. As stated in the Declaration of Darlene Ruprecht, the Debtors did not realize that they were paying \$18.00 less than required per month over the span of 31 months. This shortage accumulated and caused a delinquency of \$558.00. However, the Debtors have now caught up on this delinquency and are now current. The Debtors are in month 53 of their 60-month plan.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause does not exist to convert or dismiss this case pursuant to 11 U.S.C. § 1307(c). The motion is denied without prejudice and the case is not converted nor dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. [15-29155](#)-B-13 SHAMEKA BATTE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-28-16 [[49](#)]

DEBTOR DISMISSED: 01/28/2016

Final Ruling: No appearance at the February 24, 2016, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court's decision is to dismiss the case.

First, the Debtor has not filed a Certificate of Completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief pursuant to 11 U.S.C. § 109(h).

Second, the Debtor does not have regular income according to Schedules I and J. The Debtor is not eligible for relief under Chapter 13 pursuant to 11 U.S.C. § 109(e).

Third, the Debtor has failed to provide the Trustee with a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

14. [15-29573](#)-B-13 SAUNDRA BATTAGLIA
Steven A. Wolvek

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-15-16 [[19](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on January 11, 2016. While the delinquent installment was paid on January 21, 2016, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. [15-25582](#)-B-13 ASHWANI MAYER AND POOJA MOTION TO DISMISS CASE
JPJ-1 VERMA 1-13-16 [[49](#)]
Peter G. Macaluso

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case provided that the Debtors have filed, set, served, and become current under an amended plan by the date of the hearing on this matter as stated by the Debtors in their response.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. [15-23283](#)-B-13 STEVEN JACKSON MOTION TO DISMISS CASE
JPJ-1 Scott J. Sagaria 1-6-16 [[24](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to dismiss the case.

The Debtor is delinquent to the Trustee in the amount of \$555.00, which represents approximately 2.36 plan payments. By the time this motion is heard, an additional plan payment in the amount of \$235.00 will also be due. See 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.